



October 20, 2004

By Electronic Filing

Michael Powell
Chairman
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: Written Ex Parte filed in the proceedings captioned: IP-Enabled Services proceeding - WC Docket 04-36; In the Matter of Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211

Dear Chairman Powell:

When former Wireline Competition Bureau Chief Bill Maher spoke to the National Association of Regulatory Utility Commissioners in July, he indicated that the FCC might be considering segregating out the jurisdictional issues associated with the IP-Enabled Services proceeding from the other issues in that proceeding. A recent letter from several House members makes a similar suggestion and urges the Commission to expeditiously find that such services are "inherently interstate."¹ Significantly, the House letter expresses the "hope that the Commission [also] addresses . . . issues, such as intercarrier compensation, universal service support, public safety, and disability access, in a timely manner as well."

Unfortunately, acceding to the letter's central request virtually eliminates any hope for expeditious action in the related dockets. There is no question that acting in a piecemeal fashion can only undermine resolution of other issues raised in that docket and the related open proceedings on intercarrier compensation and universal service.

Such a premature ruling could prompt existing carriers to mimic AT&T's phone-to-internet-to-phone "least cost routing" to potentially destabilize intrastate access charge regimes as well as erode the support base for the, at least, \$1.9 billion that 24 States disburse from their own universal service programs.² The majority of those programs, as a matter of State law, are based on intrastate assessments. That in turn could increase pressures on the federal universal service program or potentially lead to rate increases for rural and low-income consumers.

¹ Interestingly, that House letter followed a decision by the House leadership not to schedule a markup on precisely the same issue. Moreover, that letter, is somewhat inconsistent with the July 22 Senate Commerce vote on companion legislation. That Senate markup resulted in an endorsement of State authority over VOIP on universal service, intercarrier compensation and E-911 ... and carved out tax jurisdiction from the reach of the bill. Indeed, even the champions of VOIP in the House that signed the letter affirmatively urge the FCC to recognize the "legitimate role of state consumer protection and public safety laws of general applicability."

² Rosenberg, Ed, Hee Lee, Chang & Perez-Chavolla, Lilia, *STATE UNIVERSAL SERVICE FUNDING MECHANISMS: RESULTS OF THE NRRI'S 2001-2002 SURVEY*, The National Regulatory Research Institute, Columbus, Ohio (June 2002) at pages 45-6. Cf. *Comments of the People of the State of California and the California Public Utilities Commission*, filed May 28, 2004 in WC Docket No. 04-36 at page 11. According to those comments, California, based on industry forecasts, estimates that VoIP will account for 40-43 percent of intrastate revenues by 2008: "This amount represents nearly half of the nearly \$1 billion funding base for the five state-mandated universal service programs in California."

Simultaneously, carriers, like Vonage, that terminate in excess of 90 percent of their traffic to the legacy network, and do not now pay into the existing intercarrier and universal service regimes at the same levels as their competitors, will have a perverse incentive to extend the financial advantage provided by the unresolved status of universal service, intercarrier compensation, and related issues raised in the IP Enabled Services proceeding. The question of the jurisdictional status of the services has been one, if not the, primary driver for their participation. Its elimination would provide strong incentives for them to attempt to preserve the status quo.

In any case, the issue of State authority vis-à-vis IP services has attracted a disproportionate amount of attention. Segments of the industry have raised concerns that States will rush toward enacting varying or unnecessary economic regulations on the nascent service, which could risk slowing its deployment in the market.

This concern is, at best, overblown.

Anyone examining the history of regulation, instead of industry rhetoric, cannot avoid the conclusion that Justice Brandeis's State "laboratories" have lead the way with respect to implementing innovative policy. Even a predominately rural state like Iowa, in a range of 14 dockets deregulated everything from Centrex service, to cellular service, to payphones, to intrastate toll, and more. The first such IUB proceeding concluded in 1983.³ Indeed, much of the 1996 Act is based on State experiments with interconnection and unbundling polices designed to encourage competitive entry - experiments, that in some cases, predated the 1996 Act by more than 10 years.

Moreover, while some States are looking at the issue of VOIP and their role in a VOIP world, it does not appear that any States will enact multiple rules anytime soon. The two states that attempted to address aspects of VOIP service under traditional telephone rules, Minnesota and New York, although their actions were initially enjoined by the courts, as the FCC's generic rulemaking suggests, limited their efforts to non-economic issues.⁴ Significantly, the Minnesota commission's inquiry was focused on the provision of 911 services – something most commenters agree that all providers will have to ultimately provide under the direction of State authorities.

Regardless of what the FCC ultimately decides on jurisdictional issues, we urge the FCC to resist the temptation to act in piecemeal fashion. The Commission should first complete its long outstanding intercarrier compensation proceeding, and then move to act expeditiously and comprehensively on all the issues presented in the IP Enabled Service proceeding *simultaneously*.

Sincerely,

Stan Wise
NARUC President

Robert Nelson
Chair, NARUC Committee on Communications

Glen Thomas
Chair, NARUC Washington Action Committee

³ TELECOMMUNICATIONS COMPETITION SURVEY FOR RETAIL LOCAL VOICE SERVICES, A Report of the Iowa Utilities Board, IUB Project Manager: Larry M. Stevens Utility Specialist – Policy Development (January 2004) at page 5 [available at <http://www.state.ia.us/government/com/util/Misc/Reports/2004TelecomSurvey.pdf>]

⁴ Indeed, the limited number of States that have already informally or formally examined this issue, have generally focused on issues that all five FCC commissioners agree are worthy of investigation – intercarrier compensation, universal service or E911 capability. See, e.g., paragraph 61 of the IP Enabled Rulemaking, where the FCC says: "As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways."